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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL JOHN WOODSON,

Defendant and Appellant.

C073087

(Super. Ct. Nos. 10F47,  
11F2108, 11F6381)

Appointed counsel for defendant Michael John Woodson has filed an opening brief that sets forth the facts of the case and asks this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. Defendant filed a supplemental brief contending that, contrary to the assurances of the trial court and assistant district attorney, he is improperly serving 85 percent of his time. We address this issue, in addition to undertaking a review of the record as required by *Wende*, and affirm the judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On April 3, 2009, defendant reported his truck had been stolen. A few hours later, officers located the truck and a woman who said defendant had given her permission to drive it. Defendant drove to meet the officers, with his child in the backseat, and eventually admitted he had given the woman permission to drive his truck. Defendant admitted to having used methamphetamine and officers determined he was under the influence. Defendant had .5 grams of methamphetamine in his pocket and a hypodermic needle in his motel room.

Defendant was charged in Shasta County case No. 10-00047 (10F47) with possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), driving under the influence of drugs (Veh. Code, § 23152, subd. (a)), being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)), child endangerment (Pen. Code, § 273a, subd. (b)), and presenting false identification to a peace officer (Pen. Code, § 148.9, subd. (a)).

Defendant pleaded no contest to possession of methamphetamine and driving under the influence. On October 14, 2010, the trial court sentenced defendant to three years in state prison, suspended execution of sentence, and placed defendant on formal probation.

On March 3, 2011, a probation search of defendant's residence resulted in the seizure of 1.1 grams of methamphetamine, one round of seven-millimeter ammunition, 27.2 grams of marijuana, three hypodermic needles, and five glass smoking devices.

Defendant was charge in Shasta County case No. 11-02108 (11F2108) with possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), unlawful possession of ammunition (Pen. Code, former § 12316, subd. (b)(1)), possession of an injection or smoking device (Health & Saf. Code, § 11364), and unlawful possession of a hypodermic needle (Bus. & Prof. Code, former § 4140). It was further alleged defendant

has a prior strike conviction. A petition alleging violation of probation in case No. 10F47 was also filed based on these charged offenses.

On July 29, 2011, officers executing outstanding warrants conducted a search of defendant's residence and located a plate with methamphetamine residue and a plastic straw on it, a metal spoon with methamphetamine residue on it, and a pill box containing 31.2 grams of methamphetamine.

Defendant was charged in Shasta County case No. 11-06381 (11F6381) with possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), possession of an injection or smoking device (Health & Saf. Code, § 11364), and unlawful possession of a hypodermic needle (Bus. & Prof. Code, former § 4140). It was further alleged defendant has two prior strike convictions and committed the current offenses while released on bail or on his own recognizance (Pen. Code, § 12022.1).

On April 13, 2012, defendant pleaded no contest to possession of methamphetamine in both Shasta County case Nos. 11F2108 and 11F6381. He also admitted the on bail enhancement in case No. 11F6381 and the probation violation in case No. 10F47. The trial court sentenced defendant to six years four months in state prison and again, suspended execution of sentence, and placed on formal probation.<sup>1</sup>

Thereafter, seven separate petitions for revocation of probation were filed alleging failed drug tests and failures to report. On August 9, 2012, defendant admitted the allegations contained in two of the petitions.

On December 11, 2012, the trial court terminated probation, lifted the stay of execution and committed defendant to state prison for a period of six years four months, as follows: the upper term of three years for possession of methamphetamine in Shasta

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<sup>1</sup> On October 22, 2012, the trial court modified the sentence to correct a sentencing error which omitted sentence on the on bail enhancement. The resulting sentence, however, remained six years four months in state prison, execution suspended.

County case No. 11F2108, one-third the middle term (eight months) for possession of methamphetamine in Shasta County case No. 11F6381, two years for the on bail enhancement in Shasta County case No. 11F6381, and one-third the middle term (eight months) for possession of methamphetamine in Shasta County case No. 10F47. The trial court ordered defendant pay various fines and fees and awarded him 137 days of presentence custody credit.

Defendant appeals. He did not obtain a certificate of probable cause. (Pen. Code, § 1237.5.)

Defendant contends the Department of Corrections and Rehabilitation is applying a 15 percent limit on his worktime credits, despite the assurances of the trial court and assistant district attorney that he would be eligible to earn 50 percent credit. This issue, however, cannot be raised here.

Once defendant is sentenced and delivered into the custody of the Department of Corrections and Rehabilitation, the trial court is without jurisdiction in the matter. (See *In re Black* (1967) 66 Cal.2d 881, 888-889.) Moreover, there are no facts in the record establishing what percentage of his sentence defendant is serving. (*People v. Landers* (1976) 59 Cal.App.3d 846, 850 [review on direct appeal is limited to matters contained in record of trial proceedings].) If defendant wishes to pursue the issue of custody credits, the appropriate vehicle for doing so is through a petition for writ of habeas corpus. (See, e.g., *In re Pope* (2010) 50 Cal.4th 777 and *In re Tate* (2006) 135 Cal.App.4th 756.)

Having also undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

NICHOLSON, Acting P. J.

We concur:

HULL, J.

BUTZ, J.